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8 Attorney for Plaintiff
9 DUANE RINEHART

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 Duane Rinehart,

13 Plaintiff,

14 v.

15 Asset Acceptance, LLC,

16 Defendant.

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

'10CV 1993

JM POR

18 PRELIMINARY STATEMENT

19
20 1. This is an action for actual and statutory damages plus costs and attorney
21 fees brought by an individual consumer for violations of the federal Fair Debt Collection
22 Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter "FDCPA") and the California
23 Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter,
24 "Rosenthal Act"), which prohibit debt collectors from engaging in abusive, deceptive,
25 and unfair practices.

26 JURISDICTION AND VENUE

27 2. The jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28
28 U.S.C. §1337.

3. Plaintiff Duane Rinehart (hereinafter, "Plaintiff") is a natural person and resident of San Diego County, California.

4. Upon information and belief, Defendant Asset Acceptance, LLC (“Defendant”) is a Delaware limited liability company with its principal place of business in Michigan.

5. Upon information and belief, Defendant engages in substantial, continuous, and systematic activities in the State of California.

6. This action arises out of Defendant's activities in the State of California, and Defendant purposely directed those activities toward residents of California and purposely availed itself of the privilege of conducting activities in the State of California.

FACTS

7. On or about October 11, 2006, Plaintiff faxed a letter to Defendant requesting that Defendant cease all telephonic and written communication with Plaintiff.

8. Plaintiff also sent a copy of his October 11, 2006 letter via certified mail, which was received by Defendant on November 7, 2006.

9. On the following dates, Defendant sent letters to Plaintiff attempting to collect the alleged debt: 11/03/06, 12/23/06, 01/02/07, 03/01/07, 05/05/07, 06/01/07, 07/01/07, 08/01/07, 09/01/07, 01/02/08, 01/08/08, 02/01/08, 03/01/08, and 04/01/10.

10. On or about March 29, 2010, Defendant contacted Plaintiff via telephone in an attempt to collect the alleged debt.

11. On or about March 29, 2010, Plaintiff filed a complaint with the California Department of Justice regarding Defendant's actions.

12. On or about July 23, 2010, Defendant sent a letter to the California Department of Justice admitting having received Plaintiff's cease communication letter and admitting having contacted him via telephone after receipt of said letter.

13. As a direct and proximate result of Defendant's actions, Plaintiff suffered actual damages including, but not limited to, financial harm, loss of productivity, anxiety,

1 indignation, irritability, nervousness, fear, worry, loss of happiness, headaches, loss of
2 sleep, insomnia, nausea, stress, and anger.

3 **FIRST CLAIM FOR RELIEF**

4 **Violations of Federal Fair Debt Collection Practices Act**

5 14. Plaintiff realleges and incorporates paragraphs 1 through 13 above as if
6 fully set out herein.

7 15. Plaintiff is a "consumer" within the meaning of the FDCPA.

8 16. Defendant is a "debt collector" within the meaning of the FDCPA.

9 17. Defendant alleged that Plaintiff owed a "debt" within the meaning of the
10 FDCPA.

11 18. Defendant violated the FDCPA, 15 U.S.C. §1692c(c), by contacting
12 Plaintiff after Plaintiff notified Defendant in writing of Plaintiff's request that Defendant
13 cease further communication with Plaintiff.

14 19. Defendant violated the FDCPA, 15 U.S.C. §1692d, by engaging in conduct
15 the natural consequence of which was to harass, oppress, and/or abuse in connection with
16 attempted collection of the alleged debt.

17 20. As a result of the above violations of the FDCPA, Defendant is liable to
18 Plaintiff for Plaintiff's actual damages, statutory damages, costs, and attorney fees.

19 **SECOND CLAIM FOR RELIEF**

20 **Violations of California Fair Debt Collection Practices Act**

21 21. Plaintiff realleges and incorporates paragraphs 1 through 20 above as if
22 fully set out herein.

23 22. Plaintiff is a "debtor" within the meaning of the Rosenthal Act.

24 23. Defendant is a "debt collector" within the meaning of the Rosenthal Act.

25 24. Defendant alleged a "debt" to be owed by Plaintiff within the meaning of
26 the Rosenthal Act.

27 25. Each and every violation of the FDCPA as described herein is a violation of
28 the Rosenthal Act, Cal. Civ. Code §1788.17.

1 26. As a result of the above violations of the Rosenthal Act, Defendant is liable
2 to Plaintiff for Plaintiff's actual damages, statutory damages, costs, and attorney fees.

3 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
4 Defendant for the following:

- 5 A. Actual damages of at least \$10,000;
6 B. Statutory damages pursuant to 15 U.S.C. §1692k in the amount of \$1,000;
7 C. Statutory damages pursuant to Cal. Civ. Code §1788.30(b) in the amount of
8 \$1,000;
9 D. Costs and reasonable attorney fees pursuant to 15 U.S.C. §1692k and Cal.
10 Civ. Code §1788.30(c);
11 E. For such other and further relief as may be just and proper.

12
13 Dated: September 21, 2010

LAW OFFICES OF PAUL E. SMITH

14
15 By: _____



PAUL E. SMITH
Attorney for Plaintiff
DUANE RINEHART

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17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal
20 Rules of Civil Procedure.
21

22
23 Dated: September 21, 2010

LAW OFFICES OF PAUL E. SMITH

24
25 By: _____



PAUL E. SMITH
Attorney for Plaintiff
DUANE RINEHART

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings on other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Duane Rinehart

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Smith, 16870 W Bernardo Dr 400, San Diego, CA 92127
(858) 679-3396

DEFENDANTS

Asset Acceptance, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10CV 1993

JM POR

FILED
SEP 23 2010
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 2 DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seqBrief description of cause:
Violations of Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/21/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

18408

AMOUNT

\$350-

APPLYING IFP

9724/10

JUDGE

MAG. JUDGE

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS018408
Cashier ID: bhartman
Transaction Date: 09/24/2010
Payer Name: PAUL E SMITH

CIVIL FILING FEE
For: RINEHART V ASSET ACCEPTANCE
Case/Party: D-CAS-3-10-CV-001993-001
Amount: \$350.00

CHECK
Check/Money Order Num: 1398
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.